IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9769 of 2002

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M.R. UTENSILS

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9769 of 2002
MR MUKUL SINHA for Petitioners.
..... for Respondent No. 1

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 08/10/2002

ORAL JUDGMENT

(Per : THE CHIEF JUSTICE MR. D.S.SINHA)

1. Heard Mr. Mukul Sinha, the learned counsel appearing for the petitioners, at length and in detail.

2. By means of instant petition under Article 226 of the Constitution of India, the petitioners pray that The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002, herein called the "Ordinance", be declared ultra vires and unconstitutional.

3. The sole submission of Mr. Mukul Sinha, learned counsel of the petitioners, is that the Ordinance violates the provisions of Article 14 of the Constitution in as much as it does not provide any remedy to the aggrieved borrower against the action taken by the secured creditor under Section 13 of the Ordinance. According to the learned counsel, the impugned Ordinance is liable to be struck down as arbitrary and unconstitutional.

4. Section 13 of the Ordinance provides that notwithstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of Court or Tribunal, by such creditor in accordance with the provisions of the Ordinance. Sub-section (2) of Section 13 of the Ordinance contemplates that action by the secured creditor against the borrower may be initiated by a notice in writing calling him to discharge in full his liabilities within sixty days from the date of notice, failing which the secured creditor has been empowered to exercise all or any of the rights under sub-section (4) of Section 13 of the Ordinance.

5. Under sub-section (4) of Section 13 of the Ordinance, the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely :-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the secured assets of the borrower including the

right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

6. Sub-section (3) of Section 13 mandates to communicate to the borrower the details of the amount payable by him and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

7. Section 17 of the Ordinance confers upon the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 by the secured creditor or his authorised officer, right of appeal to the Debts Recovery Tribunal having jurisdiction in the matter, within forty-five days from the date on which such measures had been taken. However, the right of appeal has been circumscribed by the provisions of sub-section (2) of Section 17 of the Ordinance, which provides that the appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent of the amount claimed in the notice referred to in sub-section (2) of Section 13. But, the embargo of deposit by the borrower with the Tribunal seventy-five per cent of the amount claimed in the notice is not absolute. Proviso to sub-section (2) of Section 17 empowers the Tribunal to waive or reduce the amount to be deposited by the borrower for the reasons to be recorded in writing.

8. Section 18 of the Ordinance confers upon the person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 the right of further appeal to the Appellate Tribunal within thirty days from the date of receipt of the order of the Debts Recovery Tribunal.

9. Under Section 19 of the Ordinance the Debts Recovery Tribunal or the Appellate Tribunal, as the case may be, on an appeal filed under Section 17 or Section 18, is empowered to direct the secured creditor to return

the secured assets to the concerned borrower, if it finds that the possession of the secured assets by the secured creditor was wrongful. This Section further provides that the borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or the Appellate Tribunal.

10. The submission of the learned counsel, tested on the touchstone of the provisions of the Ordinance, does not hold water. The provisions regarding notice to the borrower, two appeals, restitution and compensation, contained in Sections 13, 17, 18 & 19 of the Ordinance, sufficiently and adequately take care of the interest of the borrower against the action taken against him by the secured creditor under Section 13 of the Ordinance. In the opinion of the Court, the impugned Ordinance does not suffer from the vice of arbitrariness. It is not in dissonance with the provisions of Article 14 of the Constitution in any manner.

11. Otherwise also, admittedly, no notice has been received by the petitioners from their unidentified and undisclosed secured creditors. In the absence of any notice from the secured creditor to the petitioners, no cause of action can be said to have arisen for maintaining instant petition. The exercise of examining the validity of the Ordinance is merely academic, and an exercise in futility. It cannot be gainsaid that the special and extraordinary jurisdiction under Article 226 of the Constitution should not be exercised merely for academic purpose.

12. All told, the petition has no substance. It is dismissed accordingly.

(D.S. Sinha, C.J.)

(J.M. Panchal, J.)

(Patel)